IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1824 OF 1990

Ganpat Mangal Ambekar,
(since deceased through LRs.)
1) Gojrabai Ganpat Ambedkar
2) Karbhari Ganpat Ambekar.
3) Suryakant Ganpat Ambekar,
4) Prakash Ganpat Ambekar.
5) Sudam Ganpat Ambekar,
6) Salubai Pandurang Godhade,
7) Zelyabai Khedu Godhade,
8) Draupadabai Ramdas Suryavanshi,
Nos.1 to 6 and 8 R/o.Khangaon,
Thadi,Taluka Niphad, Dist.Nashik
and No.7 R/o.Gopur, Taluka
Chandvad, Dist. Nashik. ... Petitioners

Versus.

Sukhdev Tukaram Sonavane,
(since deceased through LRs.)
1) Punjabai Sukhdev Sonavane,
2) Sitaram Sukhdev Sonavane,
3) Baban Sukhdev Sonavane,
4) Laxman Sukhdev Sonavane,
5) VasantSukhdev Sonavane,
6) Sharad Sukhdev Sonavane,
7) Hirabai Ramnath Sangale,
8) Kamalabai Vasant Sangale,
9) Vimalbai Santu Sanap,
10) Tarabai Narhari Gambhire,
11) Mirabai Sukhdev Sonavane,
Nos.1 to 6 & 11 R/o.Mazalgaon,
Taluka Niphad, Dist. Nashik.
No.7 R/o.Dongargaon, Taluka
Niphad, Dist. Nashik.
No.8 R/o.Gondegaon, Taluka
Niphad, Dist. Nashik.
No.9 R/o.Shigave, Taluka
Niphad, Dist. Nashik. ... Respondents.

Ms.Deepa Sawant holding for Shri C.G.Gavnekar for the Petitioners.

Shri P.N.Joshi for the Respondents Nos.1 to 6 and 11.

CORAM : ABHAY S.OKA, J.

DATED : 22nd February 2007.

ORAL JUDGMENT.

1. The submissions of the learned Advocates appearing for the parties were heard on the last date. By this petition under Article 227 of the Constitution of India, the challenge is to the Judgment and Order dated 28th February 1990 passed by the Maharashtra Revenue Tribunal. It will be necessary to refer to the facts of the case in brief with a view to appreciate the submissions made on behalf of the parties.

2. The land in dispute is Gat No.171 admeasuring 80 Ares situated at village Manjargaon, Taluka Niphad, District Nashik. The Petitioner sold the said land to the Respondent by a registered document on 21st May 1971 for consideration of Rs.800/-. A suo-motu enquiry was held by the Tahsildar, Niphad on the ground that the transaction is hit by sub-section (3) of section 36 of the Maharashtra Land Revenue Code, 1966 as the Respondent is not a tribal who purchased the said land from the Petitioner-Tribal and the permission was not sought before transferring the land. By order dated 24th January 1989, the Tahasildar directed that the suit land should be withdrawn from the possession of the

Respondent and should be placed in the possession of the Petitioner. The said order was challenged by the Respondent by preferring an Appeal before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal upheld the contention that though the Petitioner belonged to "Bhil" community, he cannot be considered as a person belonging to Scheduled Tribe within the meaning of sub-section (2) of section 36 of the said Code. The Tribunal held that the action under section 36(3) of the said Code ought to have been taken within a reasonable period. The Tribunal held that the action was initiated in the year 1986 for the said transaction which was of the year 1971 and therefore, the action cannot be said to have been taken within a reasonable time. The Tribunal recorded a finding that the Petitioner was not at all an ignorant person and it was established that the Petitioner though a Tribal took immediate steps to get the suit land which was an Inam land converted into old tenure by paying the nazarana within a reasonable period.

3. The learned Counsel appearing for the Petitioners submitted that there is no prescribed period of limitation for initiating suo-motu proceedings. He submitted that the statutory provision has been enacted for the protection of the Tribals and therefore, by no stretch of imagination it can be said that action was

not taken within reasonable time. He submitted that the statutory provision has been completely defeated as a result of the impugned order. The learned Counsel appearing for the Respondents placed reliance on a decision of the Apex Court, in which it was held that the action ought to have been taken within a reasonable time and in this case by no stretch of imagination it can be said that the action was taken within a reasonable time. He submitted that the Petitioner is not a tribal within the meaning of sub-section 2 of section 36 of the said Code.

4. I have considered the submissions. My attention has been invited to the decision of the Apex Court in the case of Mohamad Kazi Mohamad Amin v/s. Fatmabai Ibrahim [(1997) 6 S.C.C. 71]. The Apex Court was dealing with a suo-motu enquiry held by the Tahsildar under the provisions of section 84(c) of the Bombay Tenancy and Agricultural Land Act, 1948. By the suo-motu proceedings the land was sought to be resumed by holding that the sale transaction in respect of the land was illegal. The Apex Court in paragraph 2 of the said decision observed thus:

> "2. Although M.Bhasme, learned counsel appearing for the appellant took a stand that under section 63 of the Act aforesaid, there

should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84-C of the Act does not prescribe any time for initiation of the proceeding. **But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time.** In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B.Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v/s. Jethmal Bhagwandas Shah disposed of on 1.3.1990, where in connection with Section 84-C itself it was said that the power

> under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v/s. Patil Raghav Natha and in the case of Ram Chand v/s. Union of India has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under Section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs." (Emphasis supplied).

5. A perusal of the impugned order show that the suo motu proceeding was initiated in the year 1986 in respect of the sale transaction of the year 1971.

6. A finding of fact was recorded by the Tribunal that the Petitioner had taken prompt steps for converting the land from Inam land into the land with old tenure by paying Nazarana amount. The finding is that the Petitioner does not appear to be ignorant and

an illiterate person. If these are the findings of fact, it is obvious that the action initiated after lapse of 15 years from the date of transaction, in the fact of the case, cannot be said to have been initiated within a reasonable time. The Tribunal has referred to a Notification dated 15th June 1969 issued by the State Government. In the said notification, the Scheduled Tribes are specified in column 5 of the schedule to the said notification for the areas specified in column 4 thereof for the purposes of sub-section 2 of section 36 of the said Code. The Tribunal found that though the Petitioner belongs to "Bhil" community, "Bhils" from Taluka Niphad District Nashik are not included in "Scheduled Tribes" specified in the said notification. The said notification was in force on the date of the transfer of the land. On this ground also, the order of Tahasildar has been set aside. This finding is not shown to be illegal.

7. Therefore, there is no reason to interfere with the findings of fact recorded by the Tribunal. There is no merit in the case. Writ Petition is rejected.

Judge.